संख्या-05/2022/13(2)2022 /सैंतालीस-का-1-2022

प्रेषक,

डा0 देवेश चतुर्वेदी,
अपर मुख्य सचिव,
उ0प्र0 शासन।

सेवा में,

समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव,
उत्तर प्रदेश शासन।

कार्मिक अनुभाग-1 **लखनऊ : दिनांक 06 जून, 2022**

विषयः- रिट याचिका संख्या-रिट-ए 2555/2022 श्री प्रकाश चन्द्र अग्रवाल बनाम् उत्तर प्रदेश राज्य व अन्य में मा0 उच्च न्यायालय द्वारा पारित आदेश दिनांक 07.05.2022

महोदय,

उपर्युक्त विषयक सचिवालय प्रशासन विभाग से संबंधित रिट याचिका संख्या-रिट-ए-2555/2022 श्री प्रकाश चन्द्र अग्रवाल बनाम् उत्तर प्रदेश राज्य व अन्य में पारित मा0 उच्च न्यायालय के आदेश दिनांक 07.05.2022, जो उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के अधीन संस्थित की गयी/की जाने वाली अनुशासनिक कार्यवाहियों के संबंध में है, की प्रति आवश्यक कार्यवाही हेतु प्रेषित है।

संलग्नकः यथोक्त।

भवदीय,
डा0 देवेश चतुर्वेदी
अपर मुख्य सचिव।

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नही है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है ।

http://shasanadesh.up.gov.in

Court No. - 8

Case :- WRIT - A No. - 2555 of 2022

Petitioner :- Prakash Chandra Agrawal
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Home U.P. Lko. And Another
Counsel for Petitioner :- Gaurav Mehrotra,Akber Ahmad
Counsel for Respondent :- C.S.C.

Hon'ble Vivek Chaudhary,J.

1. Present writ petition is filed by the petitioner challenging his punishment order dated 11.04.2022 passed by Additional Chief Secretary/Principal Secretary, Secretariat Administration Department, Lucknow (respondent no.2).

2. By the impugned order, petitioner is given a punishment of censure entry and reversion to the post of Section Officer from the post of Under-Secretary.

3. At the very outset, learned counsel for petitioner submits that the inquiry was conducted by the Special Secretary, Medical Education Services, U.P., who submitted her report on 25.08.2021. He submits that in the present case, the inquiry officer was never provided the documents to which she had relied upon in the inquiry. The said documents were summoned by the inquiry officer during the conduct of the inquiry and were also perused by her. However, neither copy of the said documents were provided to the petitioner nor the same were permitted to be perused by the petitioner. Learned counsel for petitioner further submits that a bare perusal of the report shows that the inquiry was conducted in violation of Rule-7 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'Rules of 1999'), as no date, time and place was fixed in the inquiry.

4. I have perused the inquiry report as well as the impugned punishment order. A bare perusal of the same shows that the inquiry officer has, in fact, not merely failed to follow the procedure provided by Rule-7 of Rules of 1999 but has also placed burden upon the delinquent employee to prove that he is not guilty. In the first line of discussion, the inquiry officer states, that, delinquent employee through his reply to the charge-sheet/statements could not submit any evidence which would prove that the delinquent employee is wrongly charged.

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5. In the present case, the Additional Chief Secretary was summoned along with the record. Today he is present in Court along with the record and with his assistance as well as assistance of the counsels for parties, record is perused. Learned Standing Counsel also could not show from the record of the case that the procedure as prescribed under Rule-7 of Rules of 1999 is followed in conducting the inquiry and any date, time and place was fixed for evidence or evidence relied upon/summoned was provided to the petitioner.

6. Though the matter is simple as it is to be remanded back, but, in large number of cases filed before this Court, it is found that the inquiry with regard to major penalty is conducted in violation of Rule-7 of Rules of 1999. The present case is a glaring example of the same. Inquiry officer is a Special Secretary and the punishing authority is a Principal Secretary. Still a glaring error is committed in conduct of the inquiry by the inquiry officer and in failure to check the same by the punishing authority before punishment order was issued. It is not merely the duty of the inquiry officer to comply with the Rule-7 but also the duty of the punishing authority, while passing order of punishment, to ensure that the inquiry is conducted as per the procedure prescribed.

7. Such mistakes in large numbers are occurring for quite some time now in the State. The State Government as far back as on 22.04.2015 issued a detailed government order explaining at length the manner in which inquiry with regard to minor punishment or major punishment should be conducted. The government order explains at length what is already prescribed in Rule-7. When the inquiries were still not being conducted in proper manner, again under order of this Court dated 13.01.2021 passed in Writ-A No.12110 of 2020; 'State of U.P. & Others Vs. Vijay Anand Tiwari', a Government Order dated 10.02.2021 was issued by the State Government for compliance of Rule-7. Despite two aforesaid government orders, the inquiries are still not conducted in a proper manner. It is sad to note that the both the aforesaid government orders are also not being complied with by the officials. It is also noted that in large number of cases, after remand when the inquiry is reconducted, the same procedural error is again made and again the inquiry report is submitted without following the due procedure as per Rule-7. This is also putting burden of unnecessary litigation upon this Court. It is the duty of the inquiry officer as well as the punishing authority to ensure compliance of Rule-7.

8. Since these incidences are abundant in number, therefore, this Court finds it necessary now to ensure that every inquiry officer, who at present is conducting

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an inquiry or appointed to conduct any inquiry in future, is provided proper training with regard to the manner and procedure for conducting the inquiry. Similarly the disciplinary authorities are also required to go through a training with regard to the manner in which the inquiries are to be conducted and, thereafter, punishment orders are to be passed. It goes without saying that the power exercised by the inquiry officers are quasi judicial in nature and for the same a judicially trained mind is required. The State Government is already having a Judicial Training and Research Institute (J.T.R.I.) which trains/educates the officers of the State Government on the legal compliances/procedures.

9. Therefore, Director, J.T.R.I., Lucknow is directed to forthwith prepare an appropriate program for training of the inquiry officers as well as for training of the disciplinary authorities so that such mistakes are not repeated. The J.T.R.I shall also issue an appropriate identifiable certificate to every officer after he/she completes the training session. The relevant details of the said training session/certificates shall be referred by the officer concerned in every inquiry report submitted by him/her or punishment order passed. All the officers who are conducting any inquiry at present in the State shall attend the training without any delay and such inquiry officers shall conclude their inquiries only after their training is completed. Similarly the punishing authority shall also go through the required training before passing any punishment order and also refer to their session/certificate. It is further directed that no inquiry officer in future shall be appointed for departmental inquiry who has not received the training from the J.T.R.I. The State government shall bear the cost of the aforesaid training at J.T.R.I. at its own cost.

10. Senior Registrar of this Court shall forthwith send a copy of this order to the Chief Secretary of the State of U.P. as well as Director, J.T.R.I., Lucknow for its compliance.

11. Since, in the present case, admittedly, there is violation of Rule-7 as the documents relied upon by the inquiry officer were never provided to the petitioner nor the inquiry is conducted following the procedure prescribed under Rule-7, i.e., by summoning the witnesses of the department, giving chance of cross examination, providing opportunity to the delinquent employee/petitioner to call his witnesses, therefore, impugned order dated 11.04.2022 cannot stand and is set aside.

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12. The matter is remanded back to respondent no.2 for conducting fresh inquiry after following proper procedure as prescribed under Rule-7.

13. With the aforesaid, the writ petition is allowed.

Order Date :- 7.5.2022
Arti/- (Vivek Chaudhary,J.)

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